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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

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9 PATRICK MCQUILLEN,
10 Petitioner,
11 vs.
12 E.K. McDANIEL, et al.
13 Respondents.

3:04-cv-00608-LRH-VPC

ORDER

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15 This represented habeas matter under 28 U.S.C. § 2254 comes before the Court on the
16 petitioner's request (#44) for reconsideration of the Court's prior order (#43) denying petitioner's
17 motion to appeal *in forma pauperis* and further for a status conference.

18 The relevant background is set forth in the Court's prior order. The Court noted that petitioner
19 had made false declarations under penalty of perjury in the motion and supporting affidavit and that
20 petitioner had sufficient available funds to pay the filing fee on appeal. The Court denied the
21 petitioner's motion to appeal *in forma pauperis*. The Court further directed that a copy of its order be
22 forwarded to the United States Attorney for possible investigation as to perjury and to the appropriate
23 authorities with the Nevada Department of Corrections for possible investigation as to the commission
24 of a major disciplinary violation for making false statements to a court. #43.

25 In the present motion, petitioner seeks reconsideration of both aspects of the prior order.

26 With regard to the request to proceed *in forma pauperis* on appeal, the Court notes that it ruled
27 on a motion to proceed on appeal *in forma pauperis* that was submitted by the petitioner on his own
28 initiative. Petitioner now contends that he was not required to apply to proceed *in forma pauperis* on

1 appeal or to pay the filing fee on appeal because he was appointed counsel under the Criminal Justice
2 Act. Petitioner relies upon, *inter alia*, the following provision of the Act:

3 **Proceedings before appellate courts.** – If a person for whom
4 counsel is appointed under this section appeals to an appellate court or
5 petitions for a writ of certiorari, he may do so without prepayment of
fees and costs or security therefor and without filing the affidavit
required by section 1915(a) of title 28.

6 18 U.S.C. § 3006A(d)(7). Ninth Circuit Rule 3-1 similarly provides in pertinent part that “[t]he docket
7 fee need not be paid upon filing of the notice of appeal when: (a) the district court or this court has
8 granted . . . Criminal Justice Act status.”

9 The Court is persuaded that petitioner is not required to pay the filing fee on appeal under the
10 foregoing authorities. *Accord United States v. Dangdee*, 608 F.2d 807, 810 (9th Cir. 1979)(criminal
11 defendant with CJA appointed counsel was entitled to appeal without payment of fees and costs). The
12 portion of the Court’s prior order requiring payment of the filing fee on appeal therefore will be vacated.

13 With regard to the remaining provisions of the Court’s prior order, the question of whether
14 petitioner’s false statements to the Court warrant prosecution and/or disciplinary action in the
15 circumstances presented is a matter committed to the discretion of the appropriate authorities.

16 Counsel further requests a status conference if the Court has any questions. The Court does not
17 have any questions regarding the matter, and a status conference is not necessary.

18 IT THEREFORE IS ORDERED that petitioner’s request (#44) for reconsideration of the Court’s
19 prior order (#43) is GRANTED IN PART and DENIED IN PART as set forth below.

20 IT FURTHER IS ORDERED that the portion of the Court’s prior order (#43) denying
21 petitioner’s motion (#36) to appeal *in forma pauperis* is VACATED to that extent only, such that
22 petitioner is not required to pay the filing fee on appeal. The remaining provisions of the Court’s prior
23 order (#43) remain in full force and effect.

24 DATED this 30th day of January, 2007.



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28 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE